

MINUTES

INSOLVENCY LAW COMMITTEE OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA

January 16, 2004

The regularly scheduled meeting of the Insolvency Law Committee of the Business Law Section of the State Bar of California was held on January 16, 2004, at the offices of Reed, Smith, Crosby, Heafey in Los Angeles, California and by video conference at Orrick, Herrington & Sutcliffe in Sacramento, California.

The following members attended the meeting in person, by video conference or by telephone:

Geraldine Valdez
Peter Bronson
Paul Pascuzzi
Molly Baier
Mike Buckley
Lynn Ernce
Lisa Fenning
Radmila Fulton
Eve Karasik
Michael Koch
Greg Lunt
Mark Porter
Dan Schechter
Tracy Schweitzer
Cliff Stevens
Colin Wied
Rob Harris (as Ex Com liason)

The following members did not attend the meeting: David Bertenthal, Russell Clementson, Elizabeth Berke-Dreyfuss, Brian Davidoff, Bob Franklin, Judy Gibbs, Howard Kollitz, Sandy Lavigna, Donna Parkinson, Eric Sagerman, and David Shemano.

Geraldine Valdez called the meeting to order at approximately 10:00 a.m.

1. Approval of Minutes: November 21, 2003.

The minutes of the November 21, 2003 meeting were approved as modified.

2. Membership.

Nothing to report at this meeting.

3. Meeting Schedule.

The Committee reviewed the revised meeting schedule and approved it. Paul Pascuzzi is to reserve a room at the California Bankruptcy Forum Annual Conference for the May 14, 2004 meeting.

4. Budget.

Geraldine Valdez will revise/draft the 2003-2004 budget. Geraldine is gathering the information for the cost of the video conferencing and the telephone conferencing. Rob Harris noted that the ILC may be required to use the telephone conferencing service per the State Bar contract or obtain an exemption. Geraldine will follow up.

5. Subcommittee—Revised Assignments.

Nothing to report at this meeting.

6. Legislation Subcommittee's New Bill Report (Item 10 on Agenda).

A. State Bills.

Nothing to report at this meeting.

B. CLRC.

California Law Review Commission is circulating a survey regarding the uses of the assignment for benefit of creditors provisions. See page 138 of the meeting materials. Colin Wied reports that the CLRC's examination of the ABC law has been ongoing for years. Mark Porter will ascertain the purpose of the survey and this item will be discussed at the next meeting. Regarding the CLRC memo discussing proposed revisions to the mechanics lien law, Mike Koch will review the memo and materials and report to the Committee at the next meeting. The Committee will discuss whether to comment on the CLRC memo at the next meeting.

C. Federal Bills.

Greg Lunt presented this report. New federal bills included S 1970 and HR 1128. S 1970 involves increasing the limits for priority claims in bankruptcy cases for employees to \$15,000 for wages, etc., and striking the 90-day limitation. The bill would also make changes to the preference law to allow avoidance of officer/employee bonuses that are out of the ordinary course of business or constitute unjust enrichment. This bill was introduced in November 2003 and referred to the Committee on the Judiciary. The Committee briefly discussed the bill. It was noted that the preference provisions of S 1970 should be compared with S 832 that Mark Porter and Paul Pascuzzi had analyzed. HR 1128 deals with expunging from all records the fact that an involuntary petition was filed against an entity if the petition is denied. Greg will circulate summaries of these bills for further discussion at the next meeting.

Regarding S 832, there was no change to the status of this bill. It will be discussed in connection with S 1970 discussed above at the next meeting. Regarding HR

2120, the House Committee on Judiciary granted an extension for further consideration to October 31, 2003. As of the date of the meeting, no further action had been reported. Greg reported no further change in status on S 1264 and S 1331. Regarding the revisions to the Federal Rules of Bankruptcy Procedure, the Committee discussed Fed R. App. P 32.1 allowing citation to unpublished decisions raised in the email from Ken Klee. The Committee decided to contact Ken Klee to indicate its support for his objection to this rule change. No formal action could be taken because of the impending deadline for comments. The proposed changes to the rules requiring debtors to bring many things to the 341 meeting were also briefly discussed. With no interest indicated, the Committee decided not to comment on that issue. Lisa Fenning is monitoring the progress of the revisions to the Bankruptcy Rules and will give a status report at the next meeting.

D. State Bulk Sales Laws. The Committee discussed the UCC Committee's report to the Executive Committee at page 277 of the materials. The Committee voted to join in the report (Molly Baier abstained). Geraldine Valdez will contact the chair of the UCC Committee to inform them the ILC would like to join in the report and recommended repeal of the bulk sales laws.

7. Programs and Education Subcommittee Report.

Radmila Fulton briefed the Committee on the status of the programs for the Winter SEI, the State Bar 2004 Spring Meeting, the October 2004 Annual Meeting, and the ABA Spring Meeting. For the Winter SEI, Radmila confirmed that Geraldine Valdez, Peter Bronson and Judge Mund are ready to go for the Bankruptcy 101 program. The State Bar 2004 Spring Meeting is being held on the same dates as the California Bankruptcy Forum, so ILC will not be putting on a bankruptcy program. For the October 2004 Annual Meeting, the subcommittee met to determine the best topic for this program. Rob Harris and Radmila will explore whether the ILC can put on two programs. Mark Porter is working on a presentation on asset sales under Bankruptcy Code Section 363. A second program on bankruptcy fraud was discussed and determined to be a good topic for this program. Lisa Fenning and Sandy Lavigna agreed to work on this program. At the last meeting, Russell Clementson was to begin work on examples of acceptable and unacceptable pre-bankruptcy planning for the program. The Committee also discussed incorporating some of the Enron fraud type issues into the program and adding as a panelist a U.S. Trustee. Radmila and Rob will work on getting two programs, then the Committee can discuss the panel for the fraud program. If only one program is allowed, the Committee decided that the fraud program would be best for the audience expected at the October meeting. Any programs with the ABA will have to be planned well in advance. Colin Wied agreed to check into the ABA deadlines and their interest in doing a joint program. Colin also suggested the alternate dispute resolution topic for future programs, as many of the bankruptcy judges appear to be fans of ADR and may be interested in participating.

8. Website Report and Constituency Outreach Project and Report from Constituency/Outreach/Website Subcommittee.

Mike Buckley reported for the website, et al. subcommittee. Mike made a last call for any revisions to the webpage content. Rob Harris noted that the ILC must make sure the website is updated by March before the Executive Committee meeting. The

updated roster should be posted on the webpage so that all the new members are included. The Committee also discussed the status of the collection of e-mail lists and reciprocal program announcements efforts, which are continuing. The Committee also discussed the proposed uses of the list serves, including links to the webpage, reminders of ILC seminars and programs, membership solicitation, and information about recent publications.

9. Progress Reports on Current Projects from Legislation Subcommittee.

A. Badges of Fraud ALP Status. This project was to insert the common law badges of fraud back into the statute, but a sponsor for the legislation is needed. Geraldine will contact Judy Gibbs to follow up on her efforts to contact Larry Doyle regarding his review of the ALP and search for a sponsor. The matter was tabled for next meeting.

B. New Projects:

i. Model Real Estate Order and Findings. Geraldine Valdez reported that she used the order and findings and suggested some revisions. The first is to include a description of the property being sold in the order. The findings also need to include information about which liens are allowed to be paid. Paul Pascuzzi will make these revisions. The Committee will review the changes at the next meeting. Once the Committee approves the revised documents, the effort to obtain title company approval will continue. Judy Gibbs and Donna Parkinson had volunteered to contact the title companies. Rob Harris noted the continuing trend of judges wanting to sign orders that simply say, "Motion granted." Rob has submitted the proposed orders to the San Jose Inns of Court for consideration.

ii. CCP § 697.350. This project deals with the problems of perfecting a California judgment lien against a foreign corporation. There is apparently no interest from the UCC Committee to consider changes to Article 9 to address the issue. Peter Bronson will explore whether other State Bar committees might be interested in this issue as well as the secret liens issues. At this point, it is premature to begin drafting an ALP for a proposed revision of Article 9.

iii. CCP § 708.110 et seq. Peter will explore whether other State Bar committees might be interested in the secret lien issues.

iv. H.R. 975 (Bankruptcy Reform Act). Lisa Fenning reported that at the time of the meeting there had been no movement on this bill. Lisa commented that if there is no movement on this bill, the supporters may attempt to tack it onto other bills. The item was tabled for next meeting to see if there is any progress in the Legislature.

10. Publications Subcommittee Current Projects Report.

The Committee discussed topics for the mandatory article for the summer issue of the Business Law News (draft due by June 1, 2004). One suggestion was an article about the model real estate order and findings. Another was secret liens. Another was the repeal of the bulk sales laws. Geraldine Valdez will contact the UCC Committee to see if

it has a problem with the ILC using the bulk sales topic. Dan Schechter agreed to make an attempt at an annual review following the new guidelines. Geraldine will check into the requirements for the California Legislative Bulletin Annual Report.

11. New Business.

Greg Lunt volunteered to look at the proposed revisions to UCC Article 7 and report to the Committee whether there are any items on which the Committee might be interested in commenting.

12. Adjournment. The meeting was adjourned at approximately 12:15 p.m.

Respectfully submitted,
Paul Pascuzzi